



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/166931

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 16, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,982 for the period of October 1, 2014 – April 30, 2015 from the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Tyjene Taylor  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 22, 2014, the agency processed Petitioner's online renewal. She reported that her 18 year old son [REDACTED] had graduated from high school on June 30, 2014 and had no earned income.

3. On October 1, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$296/month in FS benefits effective October 1, 2014. This was based on a household size of three (including herself, [REDACTED] and another minor child) and gross household income of \$1686.14/month from the Petitioner's earned income. The notice also informed the Petitioner that if her household's total monthly income exceeds \$2,144, she must report it by the 10<sup>th</sup> day of the next month. In addition, the notice informs the Petitioner that any working adults between the ages of 18 and 49 must report by the 10<sup>th</sup> day of the next month if they employment hours are below 80 hours/month.
4. On March 30, 2015, the Petitioner submitted a Six Month Report Form (SMRF). She reported [REDACTED]'s employment at [REDACTED]. On March 31, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of [REDACTED]'s employment at [REDACTED] and [REDACTED].
5. On April 5, 2015, the agency received an employer verification for [REDACTED] from [REDACTED], Inc. reporting that [REDACTED]'s last date of employment was November 19, 2014 and his final paycheck was November 27, 2014.
6. On April 23, 2015, the agency issued a Notice of Decision to the Petitioner informing her that FS benefits would be terminated effective May 1, 2015 due to household income exceeding the program limit.
7. On May 15, 2015, the agency requested [REDACTED]'s employment and income verification from [REDACTED] and [REDACTED].
8. On May 27, 2015, the agency received a completed Historical Earnings Verification Request from [REDACTED] for [REDACTED] reporting his date of hire as September 29, 2014 and the date of his first paycheck as October 10, 2014. It further reported his end date of November 19, 2014 and final paycheck was December 5, 2014. In addition, it verified [REDACTED]'s actual gross income as follows:
 

October, 2014	\$ 758.10
November, 2014	\$ 985.15
December, 2014	\$ 98.80
9. The agency received information from the Work Number regarding [REDACTED]'s employment and income at [REDACTED]. It reported a start date of December 3, 2014 and income as follows:
 

December, 2014	\$ 424.59
January, 2015	\$1,128.39
February, 2015	\$ 807.08
March, 2015	\$ 890.56
April, 2015	\$ 911.83
May, 2015	\$ 406.14
10. The agency also received information from the Work Number that [REDACTED] was employed at [REDACTED] with a start date of February 17, 2013. No end date of employment was provided but no income beyond October, 2014 was reported. For October, 2014, gross income of \$169.58 was reported. For September, 2014, [REDACTED] had gross income of \$706.26.
11. On June 26, 2015, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of

\$1,982 for the period of October 1, 2014 – April 30, 2015 due to failure of the Petitioner to report earned income of [REDACTED]

12. On June 29, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook (FSH), § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency asserts that the Petitioner failed to report [REDACTED]'s earned income when she completed a renewal in September, 2014. The agency produced employer verifications and actual wage information to demonstrate that [REDACTED] was employed with several employers during the relevant time period. The agency also produced the Petitioner's renewal information demonstrating that the Petitioner did not report [REDACTED]'s employment status.

The Petitioner testified that she was told that she was not required to report [REDACTED]'s employment while he was in school. [REDACTED] was employed with [REDACTED] while he was still in school. However, [REDACTED] graduated on or about June 30, 2014. Therefore, the Petitioner was required to report his employment at the time of the renewal in September, 2014. Further, [REDACTED]'s additional employment was not reported to the agency until March, 2015. In addition, Petitioner's household income exceeded the reporting requirement and Petitioner failed to report this to the agency.

I reviewed the worksheets from the agency establishing the amount of the overpayment. Based on the employment and income verifications, I conclude the agency properly determined the amount of the overpayment as \$1,982 for the period of October 1, 2014 – April 30, 2015.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,982 for the period of October 1, 2014 – April 30, 2015 due to a client error in failing to accurately report household income.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of August, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 25, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability